IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10398 of 2004

WITH

SPECIAL CIVIL APPLICATION No 10463 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR MADHURI MAHESHKUMAR [SCA No.10398/04]

PARMAR PRIYANK CHANDRASINH [SCA No.10463/04]

Versus

JOINT ADMISSION COMMITTEE FOR PROFESSIONAL COURSES

Appearance:

1. Special Civil Application No. 10398 of 2004

MR VM TRIVEDI for Petitioner No. 1

MR HD DAVE, ASST. GOVT. PLEADER for Respondent No. 1-2,4

MR KB PUJARA for Respondent No. 3

2. Special Civil Application No. 10463 of 2004

MR DC DAVE for Petitioner No. 1

MR HD DAVE, ASST. GOVT. PLEADER for Respondent No. 1-2

MR KB PUJARA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 02/09/2004

COMMON ORAL JUDGEMENT

1. Since both the matters are inter-connected and the issues involved are common, they are being dealt with by this common judgment.

2. Both the matters are heard finally, and as the matters pertain to admission in medical faculty and the time is very short, with the consent of the learned counsel appearing for the parties, the contentions which are raised on behalf of the respondent Surat Municipal Corporation as well as on behalf of the State Government and Centralized Admission Committee are treated as the stand on their behalf, without their being any formal affidavit for such purpose.

3. RULE, Mr. K. B. Pujara, learned advocate waives service of rule on behalf of respondents No. 3 in both the petitions. Mr. H.D. Dave, learned Assistant Government Pleader waives service of rule on behalf of respondents No. 1,2, and 4 in Special Civil Application No. 10398/04 and respondents No. 1 and 2 in Special Civil Application No. 10463/04. With the consent of the parties, the matter is heard finally today.

4. Petitioner of SCA No. 10463/04 is a candidate belonging to non-reserved general category aspiring to get admission as a local student in the respondent No. 3 College. The petitioner of SCA No. 10398/04 is a candidate belonging to reserved category, aspiring to get admission in reserved category in the respondent No. 3 college. There is no dispute on the point that the petitioner of SCA No. 10463/04 has secured 376 marks whereas the petitioner of SCA No. 10398/04 has secured 322 marks.

5. The circumstance which has necessitated the petitioners of both these petitions to approach this Court by preferring the respective petition is that one Jasani Kalpesh, who had secured 376 marks in the category of local student, on the general seat, was admitted to the respondent No. 3 college, but subsequently, as per the declaration made by the said Jasani Kalpesh, due to financial reasons he was unable to take the admission,

and had requested for cancellation of the admission, and consequently, the admission of Jasani Kalpesh is cancelled, and one seat has, therefore, fallen vacant. Both the petitioners are claiming admission over the said seat of Jasani Kalpesh and, therefore, both the petitions.

6. Mr. Dave, learned counsel appearing for the petitioner of Special Civil Application No. 10463/04 interalia submitted that the seat as such has fallen vacant in non-reserved category, and the petitioner being a candidate who is eligible to get admission because he had also remained present personally when the admissions were given on 31st July 2004, and but for the admission granted to Kalpesh Jasani, the petitioner would have been entitled for admission on that date, and, therefore, he submitted that now as the admission of Kalpesh Jasani is cancelled, the petitioner is entitled to be considered for admission. Mr. Dave also submitted that as per rule 14, right of any candidate to get admission gets forfeited if such candidate has not remained present at the time of counselling on 31st July 2004, eventhough above in the merit, and as such candidate did not remain present on 31st July 2004, they are not entitled to claim admission, whereas the petitioner being the immediately next candidate in the non-reserved category/general category, would be eligible for admission. Mr. Dave also submitted that there is no question of considering other candidates belonging to reserved category like the petitioner of SCA No. 10398/04 because, in his submission, rule 2.6 of the Admission Rules cannot be read as detrimental to the interest of the candidate belonging to reserved category. In furtherance of his submission, he also stated that so far as the respondent No. 3 college is concerned, it is a self-financed college, and as per the prospectus, different fee structures are provided for candidates belonging to general category, SC, ST, and SEBC, and, therefore, if the student belonging to any reserved category is considered in the general category, the consequence would be that the student belonging to reserved category will be required to pay higher fees which is fixed for general category students, and, therefore, rule 2.6 cannot be interpreted so as to put the candidate belonging to reserved category to his detriment. He also submitted that if rule 2.6 is read with rule 2.7, the candidate has to declare at the time of admission for category on the basis of which admission is claimed, and, therefore, the category cannot be allowed to be changed. He, therefore, submitted that when admittedly, the seat has fallen vacant in the general category, the petitioner being the

next candidate available, is entitled to be considered for admission and the admission may be offered to the petitioner as prayed for in the petition.

7. Mr. Trivedi for the petitioner in Special Civil application No. 10398/04 belonging to SEBC category submitted interalia that the intention behind rule 2.6 is to give maximum benefit to the candidates belonging to reserved category, and he further submitted that as per rule 2.6, itself, if a candidate who belongs to reserved category is in a position to compete with the candidate belonging to non-reserved category, he is required to be considered in the non-reserved category. He further submitted that if such an interpretation is accepted, the consequence would be that one Patel Amme Bhavan who has secured 377 marks and admitted in reserved category will be required to be shifted to general category, and, as a consequence thereof, one seat would fall vacant in SEBC category where a candidate having 310 is admitted, whereas the petitioner has 322 marks, and, therefore, the petitioner would be entitled to get admission. He also submitted that as such, at the time of counselling the petitioner was not communicated, and he therefore preferred Special Civil Application No. 9476 of 2004, and in the said petition, it was declared on behalf of the Centralized Admission Committee that in case any vacancy falls or any student who is granted admission fails to pay the fees within the stipulated time, the petitioner shall be considered for admission as per inter-se merit. He, therefore, submitted that now a vacancy has arisen, and, therefore, the petitioner should be considered for admission. Mr. Trivedi also submitted that as such at present, there is no question of different fee structure between the candidates belonging to general and reserved categories, but the petitioner is ready to bear the additional financial burden in case such question arises for additional fees, as a consequence of shifting of the admission of Patel Amme Bhavan to general category. He further submitted that if any other candidate belonging to SEBC above the petitioner is there, then the petitioner has no objection if an opportunity is given to such candidate, but if such candidates are not willing to take the financial burden like the petitioner, then admission may be given to the petitioner.

8. Mr. Pujara, learned counsel appearing for the college authorities submitted that as such it is true that in the prospectus, different fee structures were there, but R.J. Shah Committee has sanctioned a uniform fee structure, and he also stated that the Surat

Municipal Corporation preferred a petition challenging the decision of the fee committee, but the said petition has been dismissed by this Court, and the Corporation has not preferred Letters Patent Appeal till this date, and, therefore, he submitted that as such, as on today, there is not separate fee structure for different category of students. However, he is unable to make a statement as to whether the Corporation is contemplating to file LPA so as to assert the right for different fees structure in the college as stated in the prospectus or is to abide by the decision of the RJ Shah Committee for uniform fee structure for all students in the college.

9. Mr. Dave, learned Assistant Government Pleader submitted that the interpretation of rule 2.6 does provide for shifting of the candidates belonging to reserved category to general category. He also submitted that even the petitioner of SCA No. 10398.04 can be considered on the basis of inter-se merits, and if the inter-se merit of the left-out candidates is to be considered, then those student who could not remain present can also be considered for offering the vacancy available at present, and, therefore, he submitted that it is not the petitioners only who are seeking admission, but there are other candidates as well in both the categories - general as well as reserved, would be eligible to be considered at the second counselling, if so ordered by the Court.

10. Rule 2.6, 2.7 and 14 which are relevant for the purpose of deciding the issues involved in these petitions, read as under:

"2.6 While admitting in the Medical / Dental / Physiotherapy / Ayurvedic / Homoeopathy Colleges of the State Government / Municipal, Grant In Aid and Self-Financed Institutes for these courses, the candidates belonging to the SC / ST / SEBC for whom reservation is made and who come on open merit will be counted against non-reserved seats. The reservation percentage will be applied in addition to those who came on merit.

2.7 The Candidates seeking admission under rule 2 will have to produce the caste certificate from competent authority as per rule 2.2 and 2.3 in prescribed proforma along with the application form. The candidate shall not be allowed to change the caste or category thereafter.

14. The admission committee shall publish the

merit lists on the notice board according to which admissions of the respective categories will be regulated. The eligible candidates will also be informed individually by the post instructing them to remain present on a specified date and to pay the fees on the same day. Those who fail to report on the specified date either in person or by a duly authorized representative and do not pay the fees on the same day will be deemed to have forfeited the claim for admission. The seats thus becoming available in consequence will be offered to the candidate on the waiting list in order of merit."

11. It is required to be noted that operation of rule 14 will be first in point of time in comparison to rules 2.6 and 2.7. on true and correct interpretation of rule 14, it appears that those candidates who fail to report on the specified date either in person or by duly authorized representative, and do not pay the fees on the same day, can be said to be deemed to have forfeited the claim for admission. But such contingency would arise at the time when the counselling is to take place. It is an admitted position that so far as the present college is concerned, the counselling took place on 30 and 31st July 2004, and therefore was no counselling prior to that so far as the present college is concerned. It is also the stand of the Centralized Admission Committee as well as the Surat Municipal Corporation that an advertisement was given, copy whereof is also produced at pages 21 and 22 in the compilation of SCA No. 10463/04, which interalia provides that all the candidates of all category as local students of Surat were required to remain present. The aforesaid is expressly provided in note No. 2 of the advertisement issued by Centralized Admission Committee, vide reference No. 269/04-05. It appears that simultaneously, advertisement was also issued by the Surat Municipal Corporation dated 28.7.04 vide reference No. 163/2004-05 for calling upon all the students of all the categories to remain present. It is also an admitted position that the petitioner of SCA No. 10398/04 was not present, and the ground sought to be canvassed, as stated in his earlier petition being No.SCA No. 9476/04, is that there was no communication. Therefore, if the matter is considered at the time of counselling on 30th July and 31st July 2004 as on that date, the right of the petitioners of SCA No. 10398/04 stand forfeited for admission, and it cannot be said that the action of the committee of giving admission to the students who were next in turn, who were present in the counselling, even in reserved category, was illegal or in contravention to

rule 14. The said petitioner, as such preferred Spl. C.A. NO. 9476/04 and statement was made by the learned Assistant Government Pleader appearing in that matter as under:

" ... in case any vacancy falls or any student who is granted admission fails to pay the fees within the stipulated time, the petitioner shall be considered for admission as per inter-se merit."

12. Therefore, such a statement would, at the best, confer right upon the petitioner to be considered for admission as per inter-se merit at the 2nd counselling which may be held thereafter. In the same manner, keeping in view the aforesaid interpretation of rule 14, if the contention of petitioner of SCA No. 10463 of 2004 is examined so as to defeat the right of the candidate belonging to general category but above in the merit who could not remain present at the counselling on 31st July 2004, cannot be accepted to the extent that in the next counselling the candidate above in the merit are to be excluded since they did not remain present on 31st July 2004. Had the petitioner granted admission on 31st July 2004, the matter would have been different, but the fact remains that the petitioner was not granted admission, and, therefore, at the most, the petitioner can claim right to get admission on the basis of inter-se merits from amongst left-out candidates. Therefore, Mr. Dave, learned counsel for the petitioner in SCA No. 10463/04 is not right in contending that the right to get admission stand forfeited for all time to time if for one or the other reason a candidate could not remain present at the time when the counselling took place. It appears that the left-out candidates or the candidates who could not remain present can be considered at the second counselling or reshuffling as the case may be. This does not mean that the candidate who could not remain present at the first counselling will get any right to disturb the admission of the students who are already admitted vice them on account of their not remaining present on the concerned date when the admission were granted to the students -may be lower in merit- in comparison to those students who remained absent.

13. As a consequence of the aforesaid discussion, it appears that the seat which is available or which may be available at the college of Surat Municipal Corporation can be offered to the students on the basis of inter-se merits from amongst the left-out candidates/students irrespective of the fact whether or nor they remain

present at the time when the first counselling was held.

14. Incidentally, the second question which arise for consideration of this Court is : What will be the effect of rule 2.6 in self-financed colleges where the College is contemplating to charge different fee structure to different categories of students.

15. So far as the rights of the self-financed institutes or colleges is concerned, the law is well settled and such right to charge the fees from their students who are admitted is read by the Apex Court in the decision in the case of TMA PAI FOUNDATION & OTHERS vs. STATE OF KARNATAKA reported in 2002 (8) SCC 481. Ofcourse the right is read with the restriction as declared by the Apex Court under Article 142 of the Constitution in the case of ISLAMIC ACADEMY OF EDUCATION & ANR vs. STATE OF KARNATAKA & OTHERS reported in 2003 (6) SCC 697. As per the said restriction, the fees could be charged to the extent it is approved or sanctioned by the fees committee headed by the retired Judge of this Court. If there is uniform fee structure for all the students in self-financed colleges, may be general, SC, ST or SEBC, then in that case rule 2.6 can be allowed to be operated in the manner as is sought to be canvassed by Mr. Trivedi because it is well settled legal position that if a candidate belonging to reserved category can compete with other candidates belonging to non-reserved category, he should be considered for non-reserved category and the resultant effect would be to make more room for the candidates belong to reserved category. In this regard, a reference may be made to the decision of this Court in the case of BAROT JIGNESH L. vs. STATE reported in 2003 (2) GLR 1727 wherein it has been held that candidates belonging to reserved category are required to be considered against the vacancy of general category if otherwise they are competing in merit with the candidate belonging to general category. Mr. Dave, learned counsel appearing for one of the petitioners tried to make a distinction by submitted that in the decision of this court in the case of BAROT JIGNESH L [supra] there was an express circular of the State Government for such purpose, but in my view, such distinction is misconceived inasmuch as in the present case also, there is an express rule 2.6 for such purpose, and, therefore, the same situation would prevail, and, therefore, in a matter where there is uniform fee structure for all the students of different category, on a true construction of rule 2.6, it appears that the student belonging to reserved category, if they are competing with the candidate of general category in open

merit, they are required to be considered in open merit.

16. Further, if rule 2.6 is considered with rule 2.7, at the most it can be said that it is not open to the students to change the category once having filed the admission form, but thereby it cannot be said that the centralized admission is prevented from shifting students to general category but such power of the centralized admission committee for shifting the students to general category in context to rule 2.6 can at the most be held valid so long as it is not detrimental to the interest of the student concerned. Such powers cannot be read to the extent in a case where a student belonging to general category is required to pay more fees in comparison to the students belonging to reserved category. If rule is not read and interpreted accordingly, it would frustrate the intention of making the relaxation qua the students belonging to reserved category with a view to make room or providing opportunity to raise the standard from amongst the weaker and poor class of the Society. Normally it can be said that a person belonging to reserved category will be financially weak and the intention is, therefore, to see that more representation is given to the weaker section of the Society, and that is the prime purpose of Reservation Policy as per Constitution of India, for upliftment of the weaker and backward class of the Society. While giving more representation, if the same is to result into adverse financial consequences, which may arise to the extent of creating a situation where the student may not be in a position to study at all due to higher fees provided for students belonging to general category, then the very purpose would be frustrated, and, therefore, it is required to be held that shifting of candidate belonging to reserved category to the general category in open merit can be permitted only to the extent so long as it does not result into adverse financial consequences on account of different fees structure from amongst the students belonging to various categories, and more particularly when the students belonging to general category are required to pay more fees in comparison to the students belonging to reserved category.

17. There is no definite stand being made by the college authorities, before finalizing the admission at the second counselling, which may be ordered hereinafter, The Centralized Admission Committee will have to get the aforesaid aspect cleared and clarified from the College authorities as to whether it is proposing to charge different fee structure to different categories of the students or not. Such may be required with a view to

ensure that the students belonging to the reserved category are not put to their peril for no fault on their part but for the action of the administration or Centralized Admission Committee, as the case may be.

18. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

18.1 The Centralized Admission Committee shall first get a clarification in clear terms from the respondent No. 3 College or Surat Municipal Corporation as to whether the fee structure for students belonging to general category and SC,ST, and SEBC is to be charged as same or different as per the prospectus or any other fee structure.

18.2 The process for filling up of the seat which is vacant or which may fall vacant in the college shall be undertaken thereafter.

18.3 In the event it is declared by the respondent No. 3 college authorities that the fee structure is going to be uniform for all categories of students, and the candidates belong to reserved categories, if shifted to the general category would not be required to pay additional fees, then in that case, the admissions given to Patel Amme Bhavan in the reserved category may be treated as in non-reserved category and thereafter the seats shall be filled in from amongst the left out candidates on the basis of interse merits from the same reserved category which may include the petitioner of Spl. C.A. No. 10398/04.

18.4 In the event it is clarified by the respondent No. 3 college authorities that different fee structure are to be provided for the students belonging to general category and SC, ST, SEBC category as per prospectus or otherwise, then in that case the admission granted to Patel Amme Bhavan shall not be treated as in general category but shall continue in the reserved category and the seat which is vacant and which may fall vacant shall be filled up by the Centralized Admission Committee on the basis of inter-se merit from amongst the left-out candidates belonging to general category.

19. Both the petitions are partly allowed to the aforesaid extent. Rule partly made absolute accordingly.

No order as to costs.

mathew [JAYANT PATEL, J.]